

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

Case No. 19-2376

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,
451 7th Street NW
Washington, DC 20410

and

FEDERAL HOUSING FINANCE AGENCY
400 7th Street SW
Washington, DC 20219

Defendants.

COMPLAINT

1. Plaintiff American Oversight brings this action against two executive branch agencies under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendants have failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining Defendants from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information it gathers, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Housing and Urban Development (HUD) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HUD has possession, custody, and control of the records that American Oversight seeks.

7. Defendant Federal Housing Finance Agency (FHFA) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HUD has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

8. On April 2, 2019, American Oversight submitted FOIA requests to HUD and FHFA seeking records reflecting communications between agency officials and certain individuals involved in real estate investment and development with reportedly significant influence within the White House. Each FOIA request is described below in further detail.

HUD FOIA Request

9. On April 2, 2019, American Oversight submitted a FOIA request to HUD seeking the following records:

All records reflecting communications (including emails, telephone call logs, calendar invitations/entries, or any other records reflecting communications) between (1) the HUD employees and officials specified below and (2) Thomas Barrack Jr., Richard LeFrak, Steven Roth, or anyone representing them or their companies (Colony Capital, LeFrak, and Vornado Realty Trust, respectively), including but not limited to individuals communicating from the following email addresses:

- i. tbarrack@colonyinc.com
- ii. rlefrak@lefrak.com
- iii. sroth@vno.com
- iv. Any email address ending in @clny.com
- v. Any email address ending in @clns.com
- vi. Any email address ending in @colonyinc.com
- vii. Any email address ending in @colonyfinancial.com
- viii. Any email address ending in @lefrak.com
- ix. Any email address ending in @vno.com

Specified HUD employees and officials:

- i. Political appointees in the immediate Office of the Secretary.
- ii. Maren Kasper, Acting President of Ginnie Mae and former Senior Advisor in the Office of the Secretary, and anyone communicating on her behalf such as a Chief or Deputy Chief of Staff, scheduler, administrative or executive assistant.
- iii. Brian Montgomery, Commissioner of the Federal Housing Administration, and anyone communicating on his behalf such as a Chief or Deputy Chief of Staff, scheduler, administrative or executive assistant.
- iv. Lynne Patton, Regional Administrator.

10. American Oversight's request seeks responsive records from January 20, 2017, through the date the search is conducted.

11. American Oversight's request explained that "political appointee" should be understood as any person who is a Presidential Appointee with Senate Confirmation (PAS), a Presidential Appointee (PA), a Non-career SES, any Schedule C employees, or any persons hired under Temporary Non-career SES Appointments, Limited Term SES Appointments, or Temporary Transitional Schedule C Appointments.

12. On April 3, 2019, HUD acknowledged its receipt of American Oversight's FOIA request and assigned it the tracking number 19-FI-HQ-00922.

13. American Oversight has not received any further communication from HUD regarding its FOIA request.

FHFA FOIA Request

14. On April 2, 2019, American Oversight submitted a FOIA request to FHFA seeking the following records:

All records reflecting communications (including emails, telephone call logs, calendar invitations/entries, or any other records reflecting communications) between (1) the FHFA employees and officials specified below and (2) Thomas Barrack Jr., Richard LeFrak, Steven Roth, or anyone representing them or their companies (Colony Capital, LeFrak, and Vornado Realty Trust, respectively), including but not limited to individuals communicating from the following email addresses:

- i. tbarrack@colonyinc.com
- ii. rlefrak@lefrak.com
- iii. sroth@vno.com
- iv. Any email address ending in @clny.com
- v. Any email address ending in @clns.com
- vi. Any email address ending in @colonyinc.com
- vii. Any email address ending in @colonyfinancial.com
- viii. Any email address ending in @lefrak.com
- ix. Any email address ending in @vno.com

Specified FHFA officials and employees:

- i. Anyone serving in the capacity of Director or Acting Director, including but not limited to current Acting Director Joseph Otting, and anyone communicating on their behalf such as a scheduler, executive or administrative assistant, or special advisor.
- ii. Anyone serving in the capacity of Chief of Staff or Deputy Chief of Staff, including but not limited to current Chief of Staff John Roscoe, and anyone communicating on their behalf such as a scheduler, executive or administrative assistant, or special advisor.

15. American Oversight's requests seek responsive records from January 20, 2017, through the date the search is conducted.

16. American Oversight's request explained that "political appointee" should be understood as any person who is a Presidential Appointee with Senate Confirmation (PAS), a Presidential Appointee (PA), a Non-career SES, any Schedule C employees, or any persons hired under Temporary Non-career SES Appointments, Limited Term SES Appointments, or Temporary Transitional Schedule C Appointments.

17. On April 2, 2019, American Oversight received an automatic email response from FHFA stating that FHFA had received American Oversight's message containing the FHFA FOIA Request.

18. To American Oversight's knowledge, FHFA has not assigned a tracking number to this request.

19. American Oversight has not received any further communication from FHFA regarding its FOIA request.

Exhaustion of Administrative Remedies

20. As of the date of this Complaint, Defendants have failed to (a) notify American Oversight of a final determination regarding the requests, including the full scope of any

responsive records Defendants intend to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

21. Through Defendants' failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Records

22. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

23. American Oversight properly requested records within the possession, custody, and control of Defendants.

24. Defendants are subject to FOIA, and they must therefore make reasonable efforts to search for requested records.

25. Defendants have failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

26. Defendants' failure to conduct adequate searches for responsive records violates FOIA and agency regulations.

27. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendants to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

28. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

29. American Oversight properly requested records within the possession, custody, and control of Defendants.

30. Defendants are subject to FOIA, and they must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

31. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.

32. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

33. Defendants' failure to provide all non-exempt responsive records violates FOIA and agency regulations.

34. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendants to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendants to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: August 7, 2019

Respectfully submitted,

/s/ Hart W. Wood

Hart W. Wood

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AMERICAN OVERSIGHT

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